

SOME  
Considerations  
Upon the  
QUESTION.

WHETHER  
The Parliament is Dissolved  
By it's Prorogation for 15 Months?

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The two Statutes upon which this Question depends  
are,

4. Edvv. 3. Cap. 14.

*Item it is accorded, That a Parliament shall be holden every  
year once, and more often if need be.*

36. Edvv. 3. Cap. 10.

*Item for maintenance of the said Articles and Statutes,  
and redress of divers Mischiefs and Grievances which daily  
happen, a Parliament shall be holden every year. As ano-  
ther time was ordained by another Statute.*

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17

SOME

Considerations

Upon the

QUESTION

Whether

The President is Divorced

From the Office of the President

By the Impeachment of the Senate

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And, 36. Edvv. 3. Cap. 10. *Item for maintainance of the said Articles, &c. a Parliament shall be holden every year, &c.*

### I.

THE first Point in this Case is, whether these two Statutes are still in Force and not Repealed?

They are not Repealed by the Act that Repeals the *Triennial Act*: That being no way contrary or inconsistent with the two former Laws, and therefore doth not derogate from them. If we have not a Parliament every year the King neglects the two former Statutes. But if we have not a Parliament in three years the king neglects not only them, but the last Statute of his own making.

there is a rule in Law, that if Laws and Statutes seem to be contrary, the one to the other, yet if by interpretation they may stand together, they ought so to do. In this case there is not so much as a seeming contrariety. *Rol. Rep. part. 1. fol. 91.*

So likewise, *fol. 91.* If a Statute extend in words to Repeal another statute, yet if the intent of it was not to repeal it, it shall not be repealed. And it is evident, there was no intention to prejudice or weaken these Laws, both by his Majesties speech, made the 21 of *March 1663*, to the *Parliament*; as also Sir *Edwyard Turners* speech (then Speaker of the *House of Commons*) made the 17 of *May 1664*, at the conclusion of that Session. The offence taken was at the manner and means in and by which the Act of King *Charles the First* did appoint a *Parliament* to be assembled. And not only the Title of this Act declares they intended a repeal, but of one Act, viz. that of King *Charles the first*, but also the very Act it self mentions and allows these Statutes of *Edw. 3* to be Laws in force, and approves them.

But if there were as there is not any colour that these Statutes are hereby repealed, yet it is plain that the Statute of the 16th. of *Car. 2. Cap. 1.* (which should make the repeal) is not to take place till after the determination of this *Parliament*. The words are, *That hereafter the sitting and holding of Parliaments shall not be intermitted or discontinued above three years, but that within three years from and after the determination of this present Parliament, &c. your Majesty, &c. do issue out your Writs, &c.* Here the enacting part of this Clause doth not take place till after the determination of this present Parliament. And the word (*hereafter*) in the beginning of the Clause, has clearly reference to that time; and with what Grammer or sence doth this rediction (*But that, &c.*) otherwise correspond to the preceding words, which will be plainer, if you suppose it penn'd, *But that within three years from and after the end of twenty years, next ensuing, shall*  
not



not in that Case the word, *hereafter*, refer to the end of twenty years, and if this Parliament survive this Prorogation there may not be much odds in point of Time, whether of the two ways the clause had been penn'd.

That the Kings of *England* have not duely nor constantly observed these *Statutes* ever since their making, doth not render them of less force; For the Kings Omissions to fulfil a Law, or his personal Offences, can never be drawn into question Judicially, because the King is not under any compulsion, nor accountable to any Court, and is so far, and in such respect *Solutus legibus*; But all Acts of the king contrary to law, are adjudged to be in deceit of the king, and the law voids and nullifies all such Acts, *Hobart*. Page 154.

## II.

The next point is, *Whether the King is bound by these Statutes, and whether it is in his power to suspend, supersede or dispence with them.*

The king is the only person that can be meant or bound; For he it is that is to summon or hold Parliaments, and therefore the Statutes intend to oblige him, or else they intend nothing, And the laws for Parliaments, that secure our Religion, Properties, and Liberties, are become onely Advices and Counsels to the Prince, with no Obligation further then the Princes present thoughts of their Expedience.

It is a Rule in law, when a thing is ordained that implies any act to be done proper only to the king, The king shall be bound by a general Act.

*Case of Warren and Smith.*

*Rolls, 1. Rep. Fol 156.*

These Statutes are in pursuance of the Common Law, and the king cannot dispenſe with the Common Law. The *Mirror of Justice*, a very ancient and authentique Book ſaith, *Cap. 1. Sect. 3. That it was a Law in King Alfred's time, That Parliaments ſhould be holden twice a year.* And all our ancient Hiſtories teſtify that formerly Parliaments were held at the three great Feſtivals every year. *Co. Lit. 116. a.*

It is a general rule in law, That the king cannot diſpenſe with any Statute made *pro bono publico*, *Cook Rep. 5. 15.* In the caſe of Eccleſiaſtical perſons, The Judges in parliament declare, That the king being the Head of the Commonwealth, cannot be an Inſtrument to defeat an Act of Parliament made *pro bono publico*, *Plow. Com. 236, 237. 5. Co. rep. 14.*

The king cannot diſpenſe with, but is bound by Statutes made concerning Courts of Judicature, *Stat. 13. R. 2. Ca. 13. 15. R. 2. Cap. 5. & 2. H. 4. Cap. 1.* made for reſtraining the Jurisdiction of the Court of Admiralty. *King James*, by his Letters patents granted to the Admiralty larger Authority and Judicature than thoſe Statutes did allow, with a claufe of *non obſtante* to thoſe Statutes. The Common-law-courts grounding themſelves on thoſe Statutes granted prohibitions contrary to the letters patents, and thereupon the ſaid Admiral complained to the king. And all the Judges then gave their opinions, That thoſe Statutes did oblige the king, and that the king could not by his letters patents go contrary to thoſe Statutes. *Co. Jurisdiction of Courts fol. 135. 136, 137.* The Subjects have the ſame right in the Courts of Judicature, as they have in the Laws, and the ſame right to the Laws as they have to their Eſtates.

The Statute 2. *Edw. 3. Chap. 8.* commands the Juſtices that they ſhall not delay doing right in any point notwithstanding any command by greater privy Seal, and the Statute of 14. *Edw. 3. Cap. 14.* is to the ſame purpoſe.

*Fitzherbert* hath a writ upon theſe Statutes requiring the Judges

Judges to proceed notwithstanding any such Command,  
*Nat. Brev. 240.*

That those laws of *Ed. 3.* for *Annual Parliaments* are *pro bono publico*, and of the greatest concern to the Nation, besides they are made concerning the highest Court of Judicature, of the *Dernier Resort*, and which regulates and keeps all the rest in order, needs not a proof to any reasonable man. Nay, the kings in parliament have very often own'd it. One of these Statutes *viz. 36. Ed. 3.* is express in this case: For that Statute begins with the confirmation of *Magna Charta*, and *Charta de Foresta*, has three other Articles for remedy and redress of Mischiefs by the kings officers and purveyors; so comes to an Article for relief of the Subject by original writ out of the Court of *Chancery*; and then for maintenance of the said Articles and Statutes, and redress of Mischiefs and Grievances which daily happen, this Article that a *Parliament* shall be holden once a year, was enacted. And this Article was held of that consequence, that in the next Parliament following *37. Ed. 3. Cap. 1. Magna Charta*, and *Charta de Foresta*, are confirmed with the word *Especially* to the Acts of the preceding *Parliament*; as if they thought those *Charters* would be rendred ineffectual to them, if they were not secured by *Annual Parliaments*.

The king may as well discharge *Magna Charta*, as these Statutes that are made for the maintenance of *Magna Charta*.

Reason will tell us, if we consider the nature and business of parliaments, That we ought to be secured of them with in a time certain, and the Law has prescribed this of a year and no other to be that certain time.

The parliament Rolls, *Ed. 2. No. 29.* and the *1. R. 2. N. 99.* are both express in the Case, and that because the parliament is the only Court wherein the Subjects can recover their right without the fear of delay, or the oppression of great Men. And how could they answer any of those ends, if the time prescribed by the Law, be not punctually observed.

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An absolute and direct law, and not *sub modo*, as under forfeiture of such a sum, or such a penalty, cannot be dispensed with by the king, but all his Acts against it are nullities, nay this reason and rule is extended to Common persons and cases; that when a statute prohibits a thing to be done, it makes a nullity of any thing done against it, if there be not a penalty limited in the statute for the breach of it.

Our king in his answer to the House of Commons of the 24 of Feb. 1672 declares, that he doth not pretend to the right of suspending any Laws wherein the Properties, Rights and Liberties of any of his subjects are concerned, and all our Properties, Rights and Liberties are bound up in those laws of annual Parliaments.

But this Fancy of Dispensation, cannot take place with any man that considers the first of these two statutes, *viz.* *That a parliament shall be held every year once, or more often if need be.* Where the king is left only Judge of the need of a Parliament oftner than once a year, but whether the king see need or no, it is absolutely, positively and peremptorily ordeined, *That a parliament shall be holden once a year.* And to make any other interpretation of the said law, is to suppose that the parliament did by that Act change the Common-law, which gave us a right to annual frequent parliaments, and deliver it wholly into the Will and pleasure of the king. And so the next statute of 36. Ed. 3. is to be reduced to this sence, *viz.* For maintenance of the said Articles and statutes an redress of divers mischiefs and grievances which daily happen, a parliament shall be holden every year, or once in 20 years, as the king please. But admit the last words of the statute of the 4th Ed. 3. (*if need be*) runs to the whole sentence, yet according to this sence. The king is obliged to call a parliament within the year if there be need, and a prorogation for 15 months puts it out of his power to call them what ever need there may be.

Neither will the preambles of the statute of the 27. Eliz. Cap.

Chap. 8. help the matter, it would be very hard, that a Preamble of an Act of Parliament should repeal or enervate statutes of that consequence, especially when the enacting part hath not a word to that purpose: but in truth this preamble is far from an allowance, for it is a complaint of Parliaments not being so often holden as in ancient time, whereby the Subjects of this Realm are greatly hindred and delayed of Justice.

It is worth the considering, how the King should have more power by the law to deprive us of constant annual Parliaments, than he had to deprive us of the four Terms in the year, or the four Quarterly Sessions of the Peace. In *Johnsons and Norton's Case*, it is there said, *That the King cannot adjourn the Courts of Westminster-Hall intermitting a Term, and that to do so would be a breach of Magna Charta, (nulli negabimus, nulli deferrimus Justiciam.)* And is it not as high a breach of the great Charter to intermit the greatest Court of Judicature beyond the time appointed by law?

It is very true the king is trusted with the time when they shall sit, so it be within the year, for that is positively prescribed by the law; so also is the king trusted with the granting Commissions to the Judges and Justices of the Peace, which he may as legally omit and frustrate those laws, as omit the appointing a time within the year by his Writ for the Parliament to meet. And it is evident, that it was the opinion of that great king, *Edvv. 3. That the Law of the Realm is such, that upon mischifs and dammages which happen to the Realm, the King ought and is bound by his Oath, with the accord of his People in Parliament, thereof to make remedy and law.* And in truth there is great reason that the king should be more especially obliged by his Oath to the laws of Parliaments, that being of highest concern.

But to conclude this point with an Argument to the capacity of such as do fancy the king can dispence with laws of so great moment and concern. Those Worthies must allow



that where the King can dispence he is not intended to dispence, without a Clause of *non obstante* to the statute he doth dispence with. And there is no such clause in the Record of Prorogation.

III. whether the Statutes do oblige the king, the next point is, Whether this Prorogation be contrary to those two statutes of Edw. 3. and what the Consequences are thereupon?

The statutes are, That a Parliament shall be holden every year. This prorogation being for above twelve months, intermits a whole year, for the statutes say, There shall be a Parliament holden once every year, or oftner; And the Prorogation such, there shall be no Parliament holden for 12 months, then next to come.

It is a foolish fancy to imagine that the statutes are sufficiently answered, since a Parliament was holden in 1375. and another Parliament shall be holden in 1376; for in all cases, where the Law speaks of a year, or a year and a day, it is understood and reckoned for twelve Calendar months, to take its relation and date from the subject matter that the Act treats of; If otherwise, the fence of the statute will be, That a Parliament shall be holden once in two years.

And it is plain that in *Richard the second's* time it was not so understood: For his first Parliament dissolved the 18th of November, his next parliament began the 20 of October following, where the Chancellour gives us the reason for summoning the parliament then, That the king would keep well his Covenant in holding annual parliaments. *Corsons Abridge. fol. 173.*

If this intermitting a parliament for above an year, be not contrary to these statutes, what can be? There is no difference to be made of any measure of time beyond a year, and there is no bounds to the time of a prorogation if



it may exceed that, it may be as well for ten or twenty years, and yet the Judges said in *Harrison's Case*, That in every statute there is some bounds set that must be kept.

*Lex & Consuetudo Parliamenti* are dear in this case of annual parliaments, neither will the single uncontested president, passed *sub silentio*, the 5th of *Eliz.* alter the Law and custom of parliaments; There the parliament was prorog'd from the second of *October*, quinto *Eliz.* to the 5th of *October*, sexto *Eliz.* being a year and three dayes, and let it be granted that this prorogation for fifteen months, is as good and valid in Law as that: If they are both illegal, the one cannot support the other, no more than her committing of *Wentworth* and another Member in *October* following, in that very parliament, for what they said in the House, shall take away the Liberty and Freedom of speech the Members in either house enjoy by Law and Custom of Parliament. In the Case of Tythes, twenty years payment will not prejudice him that can afterwards prove a *modus decimandi*; In this Case we have the Common Law and several statutes to prove a *modus*.

The Law Books tell us, That *Cook* 4. *Rep.* slides *Case*. silent and sleeping Presidents, never drawn into question, shall not *Leonard* 2. p. 87. 29. 30. alter what is established by Law *Crook* *Eliz.* 185. and Reason. Our annual Parliaments are established to us by *Cook* 9. *Rep.* fol. 16, fully the Case. *Go* 12. *Rep.* fol. 67. Common Law, Statute Law, and the Reason even of the Government it self. Neither can the Laws that were made in that Parliament be at all weakened by it now; Their Validity depends not upon the lawfulness of that Parliament, wherein they were made, but upon the distance of time since their making, during all which they have been received without contradiction, and incorporated into our Laws. Time and general reception, and multitude of Interests involved, creates an authority to that

which fresh and earlier pursuit would have rendred invalid, as also highly criminal in those that made it. Twere a very hard case if one single Act of the Crowns, contrary to law, because not observed or contested, should be of force to repeal and set aside the Common-law, several Statute-laws, and the constant course and usuage in all Ages. But if there be any use to be made of this precedent, it is that it shews us the opinion of that time, That a parliament in every year of the kings Reign did comply with the old Statutes, but this will do no service in the present case, for as our prorogation is contrived, the 28 year of this kings reign is without a parliament, whereas Queen *Elizabeth's* prorogation began the second of *October*, in the fifth year of her reign, and ended the 5th of *October* in the sixth year of her reign.

The Reason of the Government in other cases, as all Courts of Judicature which are settled by law, and can meet without the kings particular Commission, as the Courts in *Westminster-Hall*, the Sessions of the peace, the County Courts, the Hundred-Courts, the Court-Leets, &c. are either fixed to a day certain for their beginning, or limited within a time certain, and all within a year. Those that cannot begin without the kings particular Commission, ought, *ex debito Justitie*, to be granted whenever the Subject desires it; especially if there be no other remedy for the Subject. So also parliaments are limited within a time certain, which is within a year, for therein the law is positive, but as to the particular day and place, and the duration of their sitting, which could not be so well reduced into a fixed and positive Law, they were trusted with the king, as the proper subject of his Prerogative.

By all this it will appear, that a prorogation for more than a year, is contrary not only to these two Statutes, but also to the Reason of the Government, the law and custom of the Parliament, and the Common-law it self, and therefore illegal in all and every respect : And an illegal Act of the king

(13)  
is void and null in law. My Lord Hobart speaks very fully to this Case, Hob. pag. 154. upon a lapse devolved to the Bishop, and at last to the King. where he saith thus. *A Lapse is an act and office of Trust reposed by Law in the King, the end of which Trust is to provide the Church of a Rector, and therefore tho the King may suffer the Church to stand void (which yet is Culpa) yet he cannot bind himself that he will not fill the Church, for that were Injuria, & malum in se, and therefore shall be judged in Law in deceit of the King. For, Eadem mens presumitur Regis, quæ est juris & esse debet.*

When it is said, That the prorogation is void and null in Law, it is only to be understood that it is so far void and null, as it is contrary to Law; for, the prorogation doth two things; *First*, It puts off the Parliament and all business before them, and determines the Authority they at that time have, and this part of a prorogation can never be illegal, for the King can dismiss a Parliament and determine their Authority at his own pleasure.

*Secondly*, It appointed a time when they shall meet again, and their authority revive. Now this part of a prorogation is bounded by the Law, which says, *a Parliament shall be holden once a year*, and therefore, if the appointment to meet again be not within a year, it is as if there had been no appointment at all; and such a prorogation is only a dismissal of a Parliament and a determination, not a reviving of their Authority.

To all this there are some *Objections* which ought to be considered.

*Object.*

**Object.** *The King might have dissolved this Parliament and called a New within the year, and therefore these Statutes might have been observed notwithstanding the Prorogation.*

**Ans.** This is a clear confession of the invalidity of the Prorogation, since it is allowed those Statutes will not be pursued unless the prorogation be annoll'd, and the Parliament that subsists by it, dissolved: Neither doth the Kings power to remedy it by another Act, support the validity of this: for then no Act of the Kings, though never so much against Law, but may be as well justified, he having power left in him to remedy it, if he thinks fit, which is an excellent way of rendering our law Arbitrary, and the Power of the Crown Absolute.

**Object.** *The King hath frequently by shorter Prorogations and adjournments, interrupted Parliaments for several years, which is the same as if he had prorogued them at once for so long time.*

**Ans.** The case is directly different between these two, the shorter prorogation being within the letter of the Law, and those above a year directly contrary, tis very true it is as much a part of the statute, that mischeifs and grievances, should be redressed at the Parliament, as that a Parliament should be holden; yet nevertheless, though a King hereafter or in times past, has or shall, *de facto*, by short prorogations, evade the force and intent of those Laws against his Duty and Oath, that does not argue or prove, that therefore he may, *de jure*, make a prorogation above a year, which is to repeal those Laws: the wisdom of the Law doth in such cases put the king to renewing his Acts, and to bring them under a fresh consideration, Year Book 39, H. 6. as, in the case of Protections, where the kings protections for a year stand good, though several times repeated, yet one and the same protection for more than a year is utterly void. So the king can grant an exception to one single person from serving in Juries, and so to as many single persons as he shall find cause, and

and such exceptions shall be good in law, but the kings Charter to exempt all in such a County is void, because of the inconveniencies that ensue in such a case. The kings prerogative extends only for the good of the people, never to their prejudice or great inconveniencies. In like case, the Judges have a power to give a day to the parties pleading before them from one Term to another, and may renew the giving of a day from Term to Term, as often as they see cause, but they cannot give a day during life, or for term of years, the reason is, that this power or lesser prerogative is intrusted with them for the better dispatch, and not for the overthrow of Justice. Besides the Parliament doth really assemble and sit at the time of every adjournment or prorogation, and the length or duration of their sitting doth nor at all concern the state of this Question. They may as well say, the king need never call a Parliament, because he can by law annually hold a Parliament for two or three days, and then end them, not having suffered them to do any of the business of the Nation. Which is to argue from the kings power abused, which power ought to be exercised for the protection and better execution of the laws, to a nullity of the law itself.

To conclude this point, It is no argument to say, the king is trusted, you have no remedy against him, you cannot compel him, for that is the very reason why all illegal Acts of the king are null and void. *1. c. 14.* where there is a contrariety between the Law and the kings single Act, so as they cannot stand together, the kings Act cannot over-rule and make void the Law but the law makes void the kings Act; all the kings Acts are under the power, operation and construction of the law, and the law makes them either valid or void, according as they correspond or not with it, *D. 51. 24. 25.*



Since the prorogation cannot revive or continue the parliament unto the 15th. day of Feb. 1676. being in that particular contrary to law, and so void and null: The next point will be. *Whether the Parliament be still sitting, and hath been so ever since the prorogation?*

To clear this point, it would be worth the asking, If the Parliament should pass Acts in February or March next, to what day should they relate? Must the members be allowed their priviledges and their ~~rights~~ during this time? and a thousand more such like questions would arise.

But it is clear that a Parliament prorogued is a Parliament not dissolved, but continued over to another day; and when the prorogation is legal, there is a Parliament continuing, but not sitting. To express the matter clearer, it will not be un-useful, either to the clearing this point or the better understanding the whole question in general, to explain the law of Parliaments in this place.

If a Parliament meet, though afterward they be prorogued or dissolved before they make any Act, yet this in law, while it was sitting, was a Parliament holden. The Judgements that are affirmed or reversed in such Parliaments are good in law, and so are all other their proceedings, and wages shall be paid. A *Writ of Error* then brought, would have been returnable at *presens Parliamentum*, and in pleading it is usually said, *ad parliamentum incoas.* such a day, & *ab inde per prorogationem continuat.* &c.

Next, That a Session of parliament in law so called, is when there is an Act passed, and takes in all that time, that is, from the time of the meeting either by Summons or prorogation, until the time the parliament is prorogued or dissolved, for during all that time, they are in law looked upon as sitting, and all that sitting is called a Session.

Next,



Next, if a Parliament be summoned and meet, and then be prorogued either before or after any Acts passed, that this is a Parliament continued.

Therefore 'tis *Parliament. continuat. per diversas Prorogationes usq; ad* such a day, & *tunc tent.*

Therefore Parliament and Session of Parliament are different things; every Parliament must be before it can make an Act, therefore it must be and must have continuance before it can make a Session, and all the while that it hath continuance it is a Parliament in being but when it is prorog'd it cannot be said to be a Parliament sitting, or that tis then holden, but by the prorogation is put off from sitting, or being holden, but continued.

Hence you may observe the mistake of the Judges in *Huttons Rep. Fol. 61.* in not distinguishing between Parliament and Session of Parliament.

Next, In this case, *de facto*, there was no sitting, but all departed, and the King hath summon'd them by his Proclamation, to Assemble upon the 15<sup>th</sup> of *Feb.* So the king doth not know they are now sitting. And though this Prorogation for the Causes abovementioned, be not a legal prorogation, and consequently not sufficient to perform the kings will to continue the parliament, and cause them to meet again on the 15<sup>th</sup> of *February*, Yet the kings pleasure hereby declared shall be so far effectual, as that they shall not be sitting in the mean time. For though the king mistakes the Law, yet his Acts are not void in those parts of them that are agreeable to Law. It would be a contradiction in Law to say, That a Parliament cannot sit but by the good pleasure of the king, and yet be sitting contrary to his pleasure and will declared.

V.

If the prorogation be void as to the continuing and reviving of the Parliament and the Parliament be not sitting, The next point is, *Whether it can subsist sine die?*

C

There

There is no president since the beginning of Parliaments, of any Parliament that was once *sine die*, that ever came together again. So that *Lex & consuetudo Parliamenti* is against it; and if we break through that, a Parliament may be any thing, every thing, nothing as the king please, and no man is wise enough to foresee what inconveniencies and mischiefs may thereby break in upon us. Whosoever will pursue the Rolls and Records of parliament, shall find them very exact and curious in setting down the days and places from which and to which they were adjourned or prorogued; And if a continuance to a day certain be not so necessary that the king cannot dispence therewith, why should the parliament meet meerely to prorogue, as they have done in all times? Why besides the prorogation are there alwayes Commissions to continue them over?

And you shall find in the record of 13. E. 4. *Num.* 42. 43. the king and both houses of parliament, though they had the assistance of *Lincolne* and *Hussy*, yet utterly ignorant of this point of learning. A parliament *sine die*; they could find no other expedient, but Prorogation or adjourning the parliament to a certain day, or enabling the king by a special Act of parliament to call them (upon 20. dayes notice) sooner. And that with so much caution and legal formalitie, That in the very Record of the prorogation, there is a *salvo* for that Act, of parl. and the Act it self recited in English, (for so Acts began then to be) and in *hac verba*, at the end of the latine record. In this president there are several things remarkable, that they understood not a prorogation or adjournment *sine die*, to be legal, That if a parliament be prorogued or adjourn'd to a certain day, the king cannot call them sooner; That, 40 dayes notices, being *lex et consuetudo parliamenti*; The king cannot legally give them lesse notice unless he be enabled by special Act, of parliament.

All Courts and Commissions of like nature when all their proceedings refer to the first day, and are *pro hac vice, viz.*

Court

( 81 )

Court of High Steward of England. *Assizes, Nisi prius, Oyer and Terminer. Goal-delivery, &c.* If they rise without adjourning, they are determined, *Bro. Comis. 12. Jones 420, 421. 3. Leo. pag. 229.*

For these Courts have not certain days and times, like Terms to sit, but only a day to assemble, their Commission day, and then continue on by adjournment, the reason of Law requires as much, if not more exactness in the highest Court of Parliament, than in any of the inferior Courts; and the Consequences that will ensue on a contrary way of proceeding, will be very fatal.

The parliament is like those other Courts, they are dissolved by discontinuance, or by being put *sine die*, and the reason they are dissolved by the death of the king, is because they are thereby discontinued.

The Statute of the 1. of E. 6. *Ch. 7.* provides in many Cases therein particularly expressed, That the death of the king shall not be a discontinuance; But the case of the Parliament and those other Courts and Commission are not comprized in that Statute. So that in those Cases, the death of the king remains to be a discontinuance.

And further, the Writs of summons impower the Members to act only in the Parliament therein appointed to meet such a day, and also their power from the People as they are representatives, relates only to the Parl. summoned by such a Writ, on such a day, and all things in law relate to that day, and if there be not a legal continuation from that day, to another certain day, their power by virtue of those Writs expire.

*Claus. ann. 5. H. 4. pt. 1.* The king by Writs tested *Octob. 20. 5. H. 4.* summons a parliament to meet the third of *December* following; but after judging that day inconvenient, because of Christmas, by new writs tested *24. Nov. 5. H. 4.* he makes a new summons. This new summons did really make a new parliament, for it made a new Election; The

king having once issued out his writs, could not support or continue that Parliament, but by their assembling and meeting together, and being prorogued or adjourned to the day he intended, which being at that time inconvenient, he was forced to issue out new Writs, and cause the people to make new Elections. *Dyer* 203. So that the opinion, That when a new parliament is summon'd, a new day may be appointed without their meeting, was not known to be Law in that Age. Neither doth the president of 1. *Elix.* prove any thing to that purpose, for in that case the parliament did meet the 23d of January, and did also appoint the Tryers and Receivers of Petitions, and was prorogued by the Queens Commission to the 25 following.

If we should once depart from *Lex & Consuetudo Parliamenti*, let this following Instance amongst many be considered; A King, or a Protector, in the Infancy of a king, shall prorogue a Parliament *sine die*, and when they are all dispersed to their several habitations, he shall in three dayes notice summon 12 Lords, and 40 Commoners, well principled, well paid, and near at hand for his purpose, he may in few days change the Religion, subvert the rights and properties of the Nation, and enslave the people by authority of Parliament, or the Protector (such as he may be) may alter the Succession, destroy our Priuce, and place himself in his room. But to all this will be said, The law and custom of Parliaments require 40 days notice, which secures us from such a mischief.

It is replied, That there is no stronger law and custom for the 40 dayes, notice than there is against Prorogations above a year, or Parliaments, *sine die*, and if the kings prerogative can extend to the more essential parts, it may to the circumstance of the time of notice: The king that notwithstanding our old Stautes supported by the Law and Custom of Parliaments, can prorogue a Parliament to a time never so remote, or, *sine die*, (that is, to no time) which is farther distant,

distant if he pleaseth, and hath no end but with his Life, can by the same prerogative make the time of notice as short as he please, that being prescribed by no Statute, and only depending upon the law and custom of parliaments, and has been invaded by a more dangerous president than any other point of the law and custom of Parliament has been.

*Hen. 4.* the first day he came to the Crown, summons a parliament by writ to the Sheriffe, returnable the 7. day; he durst not venture upon a parliament discontinued, and so dissolved by the resignation of *Ri. 2.* though they assembled but the same day that his writtes went out for a new, and notwithstanding they were such men as he plainly approved of, yet new writs of Sumons and a new return of the Sheriffs was thought Essential at that time.

To all this is objected that *Ano. 33. of E. 1.* the parliament was dismissed the 21. of *March* without limiting any day certain, and it doth appear, that an order was made in *pleno parlamento* on the 6. of *April* following, so that the same parliament dismissed, *sine die.* was recalled and sat again, *Riley, 240. 279. 282.*

To this is answered that this record will not be of validity to change our Laws, and constant practice of parliaments ever since they were settled. The Original Book in the Tower (of which *Riley*, is a copy) was but extracts out of the close Rolls, and some parliament Rolls since lost, and a mistake in transcribing the date of the record may very easily happen for that the former leave given was a dissolution is evident, because the members of the house of Commons tooke out there Writ for Wages, which in those times, was never taken out till after the Parliament was dissolved. And, if to be dismissed, *sine die.* be a dissolution, the question is gained; and is matters not much, whether this be an Order  
of



of the Prelats and Temporal Lords, with advise and assistance of the privie Council and Judges, for these were all ordered in the dismission to stay behind and attend. And the words, *in pleno Parlamento*, might be inserted, to distinguish it from an Act of the privie Council alone; which is the more probable, both because the nature of the Order is such, as the Kings Counsell alone could have made, and the distance of time from the 21th. of *March*, to the 6th. of *April*, was too short for a recalling of the Members; and too long to suppose them to have continued of themselves near the Court, and within call. Or whether the king did call the same Parliament after a dissolution, which the same king had don in the 28. year of his reign, and his son *Ed. 2.* did in the ninth year of his: Both which were upon a pretence to advise with him, and we have no lawes extent of their making; for this does but argue; That the ~~parliaments~~ <sup>parliaments</sup> of parliaments were not yet fully settled, haveing suffered lately in the end of *H. 3.* time a great alteration, and this vigorous and might prince *Edwi. 1<sup>st</sup>* was attempting to extend his prerogative, so that we have other precedents of a like nature, as the summing of one Knight for every County, and one Citizen and one Burges for every City and Burrough. But both these, and the former precedents, have been long since condemned and fully settled on the peoples side, this latter 21. *Ed. 3. Num. 16, 17.* confirmed *51. E. 3, N. 25.* And the former the *50. E. 3. Numb. 177.*

*Item prie lae commune que pleite Establier per Statute in ceste present Parliament que chescun ann soit tenu un Parliament de faire correccions en Royalme des errors & fautes; Si null y soynt trouves & que les Chevaliers des Countees, par celles Parliaments, soyent estus per Commune Election de les meilleurs gens des dis Countees, Et nemy certifie per le Viscount Soul sans dis Election sur certaine peine.*

*Ref. Endroite dis Parliament chescun anne il y ayent Establies & Ordinaes fautes les quex soyent dament gardes & tenus*

*Et*



*Et quant al article del Election des chevalier qui vendroient a Parliament le Roy voit quils soynt Eslus per commune assent de tout le Countee.*

This Record is worth the Observing; it has not only settled the point, that our Kings could not have the same Parliament after dissolution, or being sent home returned again upon his Summons, or Writs to the Sheriffs, but settles that the people of *England* ought not only to have a parliament every year, but a new Choise.

To conclude this Objection, Let it be considered how weak a proof the date of this Order is in so great a point, to prove a parliament recalled after a dismissal *sine die*, would require Journals of their sitting, Writs by which they were summon'd, or for wages, or Acts which were allowed to be in force, and of such a nature, as none but a Parliament could do; none of which are in this case.

## VI.

If the Prorogation be void, the Parliament not sitting, nor can subsist *sine die*, then the last point is, *That it must be Dissolved.*

It will be hard to find a president of a parliament that was neither Sitting, Adjourn'd, Prorog'd, or dissolv'd; this is none of the three former, and therefore must be the latter, *viz.* Dissolved.

If the Parliament be not sitting nor can subsist, *sine die*, and the prorogation be null and void, then what shall bring them together again the 15 of *February*? It is very true the king has issued his Proclamation for that purpose, but proclamations are Acts of Grace, to notify and promulgate to the Subjects, the Laws that are, that they may be kept and observed; but they cannot alter the Law, or any proceedings in Law. When was there a parliament prorogued by proclamation? was not that always done by Commission?

and

and a Proclamation served only to give the people notice of the Kings pleasure, to order their occasions accordingly.

In the beginning of the late troubles, the king by proclamation adjourned the Courts at *Westminster* to *Oxford*, without any Writ of adjournment; and since the Return of his Majesty, in an Affize brought by Sir *Edward Heath*, against *Mr. Papit* for the Office of *Custos Brevium*, of the Court of *Kings Bench*. It was declared in the Court of *Kings Bench*, That those Courts at *Oxford* were *coram non Judice*, and all their proceedings void, and nothing hath been legal of their proceedings ever since.

At the time of the *Chatham* Invasion, the Parliament stood prorogued to the tenth of *October* 1667, whereupon the king issued out a proclamation to summon them to meet the 25th day of *July*, at their Meeting the king told them, That he had summoned them when he was under an exigence, wherein he thought not fit to rely on less Counsel than theirs. And the truth is they were universally looked upon as a Council not a Parliament. And my Lord keeper in his Speech on the 10th of *Octob.* 1667 told them, It was a doubt by grave and wise men, whether or no they could sit and act as a Parliament before that day.

Object. But notwithstanding it appears by what is said, That this Parliament is neither Sitting or Prorogued, neither can it subsist, sine die, or by Proclamation, yet there are some will tell us, That it is the Kings Prerogative alone to Prorogue or dissolve Parliaments, and they will urge the opinion of chief Justice *Lee*, That a Parliament cannot be dissolved or determined but by matter of Record, and that by the King alone. *Hutton Rep. Fol. 62.*

Ans. To this may be said, That no man or number of men (except the king) can by matter of Record Dissolve a Parliament: It is the right and prerogative of the king alone to do that. But there are several other wayes by which a parliament may naturally or violently come to its end.

end, To make the expression plainer, let this instance be offer'd; no man hath authority to kill any of the kings subjects without a lawful Commission derived from him; yet any of his Subjects may die naturally or be killed violently; and though the person that did it be liable to punishment yet the subject is not alive. The death of the king or the resignation of his Crown, are known and confessed to be the natural death of the parliament as well as of those other courts, As also the return of the king from a forreign Country into *England* determines a parliament summon'd by his lieutenant in his absence, as appeares expressly by the Act of parliament 18. H. 5. Ch. 7.

The Duke of Gloucester, the kings uncle, told Richard the second of another way. *If the king shall be absent himself wilfully from his parliament then sitting for the space of 40 Dayes.* *Histor. Angli. Fol. 2681.*

If a parliament should continue as long as this, and the king should issue no writs to fill their vacant places, it is more than probable, that would prove a natural dissolution.

If the Gunpowder treason had taken effect, or any such like wicked or sad accident should happen it would prove a violent dissolution of the parliament; So that cheif Justice Lee in *instutions Rep. Fo. 62.* was as much out in point of Law, that a parliament cannot be dissolved but by the king and by matter of record, as he was in good sence when he spoke of continuance of Parliaments by matter of Record:

*Primo Maria*, was a great Question, whether the Parliament then summoned was not void? *Dyer, 98.* Because 26 H. 8. C. 1. and 35. H. 8. C. 3. did unite and annex the Title or Stile of *Supremum Caput Ecclesie Anglicane*, to the Crown, and this Title or Stile was omitted in the then writs of Summons: Some of the Judges and Queens Council thought this was not a necessary part of the Queens Stile, others thought otherwise, but it was admitted of all hands that supposing the Statutes of Henry the

English had extended to have made this a necessary part of the Queens Stile, the force of the same Statutes had made void the parliament; so that it appears evidently by this that it was their Opinion, that a parliament might be dissolved by the force of former statutes, though the kings express pleasure for the dissolving of it did not otherwise appear upon record.

*Decimo sept. Car. 1.* was an Act made that the Parliament should not be dissolved, prorogued, or adjourned, but by their own consent by Act of parliament: Here the kings prerogative of dissolving Parliaments is limited by an Act, so that it is plainly subjected to former Statutes.

The *Triennial Act* it self, is an Instance beyond exception, this parliament which repealed it, admitted it to have been a binding Law, else what need it to have been repealed? By this Act the kings prerogative was limited both in calling and dissolving parliaments.

*Ex abundantia* it might be said, That Acts of Parliament can bind, limit, restrain and govern the Descent and Inheritance of the Crown it self, and all rights and titles thereunto. This was practised in Henry the Eighth's time, and in the thirteenth of *Eliz.* The affirming, holding, or maintaining the contrary was made Treason during her Life, and after her decease, forfeiture of all Goods and Chattels.

Neither is there any form of words necessary for the king to use in the Dissolving the Parliament: If he bids *them go home*; If he tells *them he hath no further use of them*; or if he say, *They may be gone*. So also if he *Prorogue them* for a thousand years, it cannot be thought other than a *Dissolution*: The same would be if he *Prorogued them* for a hundred or twenty years, or any time above a year, which is the boundary the Law hath set; for if you exceed that, what shall the time be; or who shall have the authority to appoint it?

FINIS.

